



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 6, 2001

VIA CERTIFIED MAIL

Warren Gotcher, Esquire
Gotcher & Belote
209 East Wyandotte
P.O. Box 160
McAlester, OK 74502

RE: MUR 4818
Charlene Spears

Dear Mr. Gotcher:

Based on a complaint filed with the Federal Election Commission on October 9, 1998, the Commission, on October 15, 1999, found that there was reason to believe that your client, Charlene Spears, violated 2 U.S.C. § 441f, and instituted an investigation of this matter.

On December 14, 1999, your client requested to enter into conciliation prior to a finding of probable cause to believe. The Commission has reviewed your request and determined to decline to enter into conciliation prior to a finding of probable cause to believe.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that a violation has occurred.

The Commission may or may not approve the General Counsel's recommendation. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing

Warren Gotcher, Esquire
MUR 4818
Page 2

five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Margaret J. Toalson, one of the attorneys assigned to this matter, at (202) 694-1650.

Sincerely,



Lois G. Lerner
Acting General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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) MUR 4818

Charlene Spears

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GENERAL COUNSEL'S BRIEF

I. BACKGROUND

During 1998, and for approximately twenty years, Charlene Spears was Oklahoma state senator Gene Stipe's personal assistant and secretary. Walt Roberts was a Democratic candidate for Oklahoma's 3rd Congressional District in 1998. His authorized committee is Walt Roberts for Congress (or "Roberts campaign" or "Committee"). During 1998, Ms. Spears engaged in numerous activities to assist Walt Roberts' Congressional bid, including using Senator Stipe's cash to reimburse contributions made to herself, to Stipe Law Firm staff, and to an employee of one Stipe Law Firm partner. On October 15, 1999, the Commission found reason to believe that Charlene Spears violated 2 U.S.C. § 441f by permitting her name to be used to make a contribution to Walt Roberts for Congress.

II. APPLICABLE LAW

The Federal Election Campaign Act of 1971, as amended (the "Act") provides that no person shall make a contribution in the name of another person or knowingly permit his or her name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person. 2 U.S.C. § 441f. Commission regulations prohibit any person from knowingly helping or assisting any person in making a contribution in the name of another. 11 C.F.R. § 110.4(b)(iii).

The Act explicitly provides that the Commission may find that violations are knowing and willful. 2 U.S.C. § 437g. The knowing and willful standard requires knowledge that one

is violating the law. *Federal Election Commission v. John A. Dramesi for Congress Committee*, 640 F. Supp. 985 (D. N.J. 1986). A knowing and willful violation may be established by "proof that the defendant acted deliberately and with knowledge that the representation was false." *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). An inference of a knowing and willful violation may be drawn "from the defendant's elaborate scheme for disguising" their actions and that they "deliberately conveyed information they knew to be false to the Federal Election Commission." *Id.* at 214-215. "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214, citing *Ingram v. United States*, 360 U.S. 672, 679 (1959).

III. FACTUAL ANALYSIS

1. Overview of Campaign

Oklahoma state senator Gene Stipe is the founder of the Stipe Law Firm, and owns or has owned numerous businesses, e.g. real estate development, newspapers, radio stations, oil and gas development. Ms. Spears represented to this Office that she assists Senator Stipe in his law business, his financial and business associations, and his personal business. Response of Charlene Spears, dated December 9, 1999. Ms. Spears also represented to this Office that during 1998 she had "unlimited money of Gene Stipe to pay any and all of his personal and business obligations without any specific direction by Gene Stipe other than a general instruction to pay what is owed and do it timely." *Id.*

Senator Stipe and Walt Roberts are both long-time residents of McAlester, Oklahoma. Mr. Roberts has known Senator Stipe all his life. Senator Stipe encouraged Roberts to run for state office. During his time in the Oklahoma state house, Roberts worked closely with Senator

Stipe to pass specific legislation. In 1996, Mr. Roberts was a paid staff member of state senator Stipe's re-election campaign. According to Mr. Roberts, Charlene Spears managed Stipe's 1996 campaign.

Walt Roberts opened his Congressional campaign account on January 20, 1998. The Roberts campaign began its operations in February 1998. From the campaign's inception in February until the campaign opened its own campaign office in April, the Stipe law office in McAlester served as the campaign headquarters.¹ The Stipe Law Firm's fax machine, copy machines, computers and video equipment were used during the campaign. Walt Robert's 1998 campaign schedule was created and kept on the Stipe Law Firm's computer system.

According to former campaign staff, consultants and documents, both Senator Stipe and Charlene Spears were involved in running the Roberts campaign. Senator Stipe often acted through Charlene Spears. During 1998, Ms. Spears made decisions regarding campaign purchases, e.g., purchasing specific tee shirts. She gave campaign staff instructions, e.g., sending them to radio stations with copies of campaign ads. She handled some of the campaign's banking, e.g., ordering money orders for large campaign media purchases. According to consultant Roger Lee, Senator Stipe and Charlene Spears ran the campaign.

According to campaign staff, after months of Ms. Spears and Senator Stipe challenging or interfering with campaign manager Michael Faust's decisions, he resigned.² After Faust resigned, Ms. Spears was even more involved in the campaign. Upon Ms. Spears'

¹ The Roberts campaign reports that in March 1998, it paid Ryan Hawkins for "office managing." The first reported campaign expense for office space was on April 14, 1998. There were no reported payments to the Stipe Law Firm.

² Charlene Spears and Senator Stipe disagreed with many of the decisions of campaign manager Michael Faust. They often challenged and overruled Faust. After one heated discussion, Senator Stipe challenged Mr. Faust to a fistfight.

recommendation, the Roberts campaign hired Anne Prather to manage the office and complete campaign disclosure reports.

Documents produced by various consultants substantiate the involvement of Ms. Spears in the Roberts campaign. Memoranda from Roberts' media consultant in Washington, DC are addressed to "Senator Stipe and Walt" and "Walt, Senator Stipe, Charlene [and others]." An August 25, 1998 memo from Roberts campaign consultant Strategy Source in DC seeks a "strategy meeting conference call with the consultants" as well as Walt Roberts and "the key figures in Oklahoma (Jason [McIntosh]³ Charlene [Spears], Senator Stipe, etc.)."

2. Reimbursed Stipe Law Firm Staff Contributions

Charlene Spears acknowledges that she used cash belonging to Gene Stipe to reimburse herself, three Stipe Law Firm staff members (Jamie Benson, Cynthia Montgomery and Debra Tumer) and an employee of one of the Stipe Law Firm partners (Gloria Ervin). The contributions total \$8,790. Some of the contributions and reimbursements were made in March 1998 when the campaign was getting started. Additional contributions and reimbursements were made in August 1998, permitting Roberts to raise \$25,000 to fund a specific media purchase.

Charlene Spears admits that she used Stipe's money to pay Ervin, Tumer, Benson and Montgomery and herself for contributions to the Roberts campaign. Ms. Spears claims that she did not tell Mr. Stipe that she used thousands of dollars in cash to reimburse law firm staff and others for their contributions to Walt Roberts. Spears depo. at p. 428. She also asserted that she did not tell the persons reimbursed that the cash belonged to Senator Stipe. *Id* at p. 423. Spears admits she knew what she did "was not proper" but that she "did not know it violated a specific

³ Mr. McIntosh advised the Roberts campaign on receiving contributions from PACs, and for a time appears to have played a key role in the campaign.

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statute.” Response of Charlene Spears, dated December 9, 1999. When asked where she got the idea to make these reimbursements, Ms. Spears testified: “I’d given all I could give, so I figured—or at least that’s what they told me I could give, so—somebody said you can’t give anymore, so I said well, maybe somebody else can here then.” Spears depo. at p. 419.

During his deposition, Senator Stipe testified that Charlene Spears has custody of cash that “we kind of use as a petty cash fund and for incidentals, contributions for different things.” Stipe depo. at p. 303. Stipe asserted that the petty cash fund generally had between \$10,000 and \$11,000. Spears claimed that the amount in the fund varied from \$10 to \$4,000 or \$5,000. Spears depo. at 399. Spears alleges that the cash just sat in her unlocked desk drawer. *Id.*

Senator Stipe and Ms. Spears assert that they do not keep any record of the amount in the petty cash fund, and what it is spent on. Stipe’s cash fund was allegedly used for raffle tickets, to support debates, for school groups, and to help people in distress. Stipe depo. at p. 304-309. Stipe states that “[m]ost of the time” but “not always” Ms. Spears told him about money she would donate. *Id.* at p. 309. He asserts that he does not usually itemize these donations from his taxes. Stipe depo. at p. 309. According to their testimony, the amount of funds normally spent from the account was small. Ms. Spears testified that she often gave Stipe’s cash to the needy, Senator Stipe’s “old constituent[s] if they, for example, had a medical emergency. In these situations, she might give \$200-\$400. Yet she also could not provide the Commission with the name of a single person to whom she provided such funds in the past year, or past five years. Spears depo. at p. 397.

In addition to the \$8,790 in contributions made in the names of others discussed above, Spears used Stipe’s funds to pay another \$1,980 to Anne Prather in exchange for her contributions to Walt Roberts. On September 2, 1998, Charlene Spears issued one of Gene

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Stipe's checks in the amount of \$2,000 to Anne Prather. On September 3 and 4, 1998, the Roberts campaign received two contributions from Ms. Prather of \$990 each, for a total of \$1,980. Ms. Prather's mother was a lifelong friend of Gene Stipe. Ms. Prather was employed by the Roberts campaign, earning \$250 per week. Prior to working for the campaign, Ms. Prather collected "unemployment for a year nearly". Prather depo. at p. 26-27. It was Ms. Spears who recommended that Prather be hired by the campaign to complete disclosure reports and act as the office manager.

Ms. Prather stated that she was paid the \$2,000 she used to contribute, with the understanding that she would work to assist Charlene Spears on Gene Stipe's business matters through November 1998. Prather depo. at p. 171.⁴ Ms. Prather stated that she believed she was not paid enough for her work for the campaign. Yet, she claims to have contributed what amounted to *two months net salary* to that campaign.

Ms. Spears and Jamie Benson also contributed \$1,000 each to Delahunt for Congress. The contributions were reportedly made on November 3, 1998. Ms. Spears testified that she could have used cash from Gene Stipe, but she claimed not to remember. Spears Depo. at pp. 453-457. Ms. Spears testified that someone informed her that if she made contributions to Delahunt for Congress, that committee would "probably help us [the Roberts campaign]"). Spears depo. at p. 453. Thus, the purpose of making these contributions was to assist the Roberts campaign. In light of Spears' involvement in the pattern of reimbursements, her equivocal testimony, and, as discussed below, her involvement in numerous schemes designed to pump

⁴ Ms. Prather asserted that she performed the services for Gene Stipe at her own home. *Id.* at 29-30. When asked if she performed services at the Stipe Law Firm, she replied "[n]ot too often. Later in her deposition, however, she asserted that half of the work might have been at home. *Id.* at p. 161. Spears claims Prather often came into the law firm at 3 p.m. and stayed until 7 or 8 p.m. *Id.* at 466. Spears contends that Prather worked in Spears' office with her, and was there with Ms. Prather as she worked. *Id.* at p. 433, 466-467. She also did not know if Ms. Prather worked at home at night to earn the \$2,000. *Id.* at p. 469.

funds into the Roberts campaign, there is a compelling inference that she used Stipe's cash to reimburse herself and Ms. Benson for the \$2,000 given to Delahunt for Congress.

In sum, the evidence indicates that Charlene Spears used Gene Stipe's funds to reimburse contributions totaling at least \$12,770. As discussed above, Charlene Spears was intimately involved in the campaign. Her testimony regarding the cash fund was contradictory and unpersuasive. The evidence indicates that Charlene Spears funneled the cash through the conduits for specific reimbursements at various points in the Roberts campaign when funds were most needed. Thus, there is probable cause to believe that Charlene Spears violated 2 U.S.C. § 441f.

3. Ms. Spears Involvement in Other Transactions

The investigation revealed that Ms. Spears was involved in other questionable transactions with respect to the Roberts campaign. While these transactions may not trigger violations of the Federal Election Campaign Act of 1977, as amended, as she was not the source of the funds, her involvement in these activities and the claims she made during her deposition cast further doubt on her assertions about the reimbursement scheme and raise serious questions about her testimony in general.

a. \$67,500 loan

The investigation established that Ms. Spears was involved in issuing a \$67,500 check to Walt Roberts that he reportedly loaned to his campaign and involved in efforts to hide the source of the funds after the press repeatedly raised questions about the source and legality of the \$67,500 loan.

In early August 1998, Gene Stipe provided Walt Roberts with \$67,500 that was immediately used for campaign media. Ms. Spears signed the \$67,500 check to Roberts, dated

August 6, 1998. The Roberts campaign reported a \$67,500 loan on August 7, 1998 from Walt Roberts' "personal funds." By the third week in August, the press had repeatedly questioned Roberts about the legality and source of the funds. Roberts asserted that he raised the funds through the sale of cattle. The investigation revealed that there was no cattle sale in early August 1998. The investigation, however, revealed that in late August 1998, in an attempt to stop or slow the damaging press about the legality of the reported \$67,500 Roberts loan, Walt Roberts, Gene Stipe and Charlene Spears arranged an actual cattle purchase, with Stipe paying an additional \$60,900 above and beyond the \$67,500 he had already given to Roberts.

During her deposition, Ms. Spears informed this Office that, at Senator Stipe's direction, she issued the \$67,500 check to Mr. Roberts for this purported purchase of cattle. She stated that because the cattle were longhorns and therefore unacceptable to Stipe, they "weren't unloaded on Gene [Stipe's] ranch." Spears depo at p. 235. Interestingly, during her deposition, Ms. Spears kept referring to the payment as a "loan" from Senator Stipe to Mr. Roberts. See Spears depo. at pp. 244 and 247. After counsel pointed out to Ms. Spears that she was characterizing the payment as a loan, she stated that Stipe "did not loan him [Roberts] any money." *Id* at p. 248.

Following her deposition, Charlene Spears submitted a written statement attempting to alter her testimony drastically. She told another story about the alleged cattle transaction. The signed statement containing these new claims was delivered to representatives of this Office on the first day of Mr. Roberts' deposition in Oklahoma. Ms. Spears' statement indicates that back in 1998, Mr. Roberts informed her that he had spent the \$67,500 on the campaign. Mr. Roberts allegedly told Ms. Spears that he had ordered the cattle, that they were about to be delivered but he had no funds to pay for it because he had spent the funds on his campaign. He therefore requested that Ms. Spears use funds from Stipe to pay for this shipment. Ms. Spears states that

she then issued two cashier's checks totaling \$60,900 to purchase the cattle. One of the checks was for \$40,900 and the other was for \$20,000. These checks were issued on August 27, 1998. Ms. Spears' written statement attempting to alter her deposition testimony, indicates that she informed Senator Stipe that Mr. Roberts had spent the \$67,500 on his campaign and that she issued checks totaling \$60,900 to pay for additional cattle. Although Ms. Spears' new story conformed with the testimony offered later that day by Roberts and later that week, it conflicted with earlier written statements submitted by Roberts and Stipe.

Moreover, the time frame when the \$60,900 in cattle were ordered and paid for is significant because it is after the press began raising questions about the source and legality of the \$67,500 reported candidate loan and Roberts publicly claimed it was payment for a cattle sale. See *Tulsa World*, "Candidate Explains Financing," dated August 22, 1998. Thus, there is strong circumstantial evidence that the actual cattle purchase for \$60,900 was undertaken in an attempt to make the earlier \$67,500 payment appear to be a legitimate cattle sale rather than an illegal contribution to the Roberts' campaign.

In sum, this Office uncovered evidence that under Senator Stipe's direction, Charlene Spears, who was deeply involved in the Roberts campaign and its then upcoming media purchases, issued a \$67,500 check to Walt Roberts, dated August 6, 1998. Although Stipe ultimately purchased cattle in 1998, the first documentary evidence of the purchase are cashier's checks dated August 27, 1998. Stipe paid \$60,900 for cattle in late August in an attempt to make the earlier \$67,500 payment appear to be a legitimate business transaction rather than an illegal contribution to the Roberts' campaign. Charlene Spears drafted and signed the check for the \$67,500 contribution. In an apparent effort to cover up the activities, Charlene Spears testified falsely regarding the cattle purchases.

b. **\$55,000 Unreported Payment**

On August 19, roughly two weeks after Gene Stipe authorized a \$67,500 payment to Roberts, and just two days after Stipe authorized a \$17,000 payment from the Stipe Law Firm, Stipe provided yet another \$70,000 to Walt Roberts. A total of \$55,000 of the \$70,000 was used on the campaign in the days prior to the primary election on August 25, 1998. The respondents assert that the \$70,000 payment was part of a legitimate contract, but the sum of the evidence indicates that it was one more in a series of fabricated transactions. Documents indicate that Ms. Spears was involved.

Senator Stipe issued the \$70,000 bank check to Roberts on August 19, 1998. The deposit slip indicates that the \$70,000 was deposited in Roberts' auction house account at 2:30 p.m. On the deposit slip is typed "o'ride by supervisor." Five minutes later, at 2:35 p.m., \$55,000 was wired out of Roberts' auction house account. The deposit slip contains a hand-written note stating "Charlene/per John Freeman."⁵ The "Charlene" on the document is an apparent reference to Charlene Spears. Roberts wired \$37,000 to LUC, the media placement firm, and \$18,000 to the firm that handled Roberts' direct mail.

c. **Payment of Roberts' Personal Expenses**

In or around March of 1998, just when the Roberts campaign was getting started, Walt Roberts began forwarding all his personal bills to the Stipe Law Firm. Charlene Spears paid those personal bills for Roberts. Stipe claims that this was part of an ongoing pattern of gift-giving. The evidence, however, contradicts the assertion.

Mr. Stipe states that he requested that Ms. Spears issue these various checks to the vendors. Stipe produced documents showing that the payments totaled \$37,070. The payments

⁵ Mr. Freeman was the president of the bank in which the transaction took place (the Bank N.A.).

were for a wide variety of expenses, including bank loans/mortgage payments, taxes, gas, cable bills, membership dues, medical care, telephone, flowers and credit card payments.

In light of Charlene Spears' involvement in the campaign, and the previously discussed transactions, it is evident that she was aware that Stipe was paying Roberts personal expenses during 1998 in an effort to allow him to subsidize his campaign.

d. \$50,000 Bank Loan

On September 1, 1998, Roberts made a \$50,000 candidate loan to the campaign. The investigation revealed that the source of the \$50,000 was Gene Stipe's brother, Francis Stipe, and that the funds were funneled through a corporation owned by William Layden, a friend and ally of the Stipes and Walt Roberts. The campaign deposited the funds on September 11, 1998. On the same date, the campaign provided \$34,000 in cashier's checks to several television stations for media purchases in the days just prior to the runoff election on September 15, 1998. Bank documents indicate that the funds were debited "[p]er the call from Charlene Spears of Gene Stipe's Office." This shows Ms. Spears' involvement in purchasing media time with funds funneled from Gene's Stipe's brother to the Roberts' campaign.

e. Alleged Art Auction

On September 11, 1998, Walt Roberts held an art auction. The asserted purpose of the auction was to sell sculptures created by Mr. Roberts. The investigation has revealed that the auction was a means to aid the Roberts campaign, and that the largest purchases were financed by Gene Stipe. Moreover, there is evidence that Ms. Spears assisted Mr. Roberts and Senator Stipe in carrying out these activities.

At the auction, Louise Crosslin issued checks totaling \$35,250 for sculptures. Crosslin is a long-time business associate of Senator Stipe. To finance these purchases,

Ms. Crosslin deposited \$45,250 in her combined personal/business checking account. The \$45,250 deposit was derived from a check written on the account of Gene Stipe and signed by Charlene Spears. The check is dated September 11, 1998--the day of Walt Roberts' auction. Ms. Spears asserts that at Ms. Crosslin's request, she brought the \$45,250 check to the auction that night and gave it to Spear at dinner after the auction. Spears depo. at p. 370.

In addition, Larry Oliver, who spent \$17,400, stated that he understood that the proceeds of the auction were supposed to aid the Roberts campaign. He was sure Charlene Spears and Gene Stipe indicated that the auction was a way to raise funds for the campaign.

IV. LEGAL CONSEQUENCES

Charlene Spears permitted her name to be used to make contributions to Walt Roberts for Congress and Delahunt for Congress, which is prohibited by 2 U.S.C. § 441f. Charlene Spears also assisted in the making of contributions made in the names of others, *see* 11 C.F.R. § 110.4(b)(iii). The total amount equals at least \$12,810. Accordingly, this Office is prepared to recommend that the Commission find probable cause to believe that Charlene Spears violated 2 U.S.C. § 441f.

The evidence adduced throughout this investigation demonstrates that the violations by Ms. Spears were knowing and willful.

First, Ms. Spears testified that she knew that the Act limited contributions to \$1,000 an election, or \$3,000 in total for the three elections at issue in this matter. Spears depo. at p. 494. Indeed, when asked where she got the idea to make these contributions in the name of another, Ms. Spears testified: "I'd given all I could give, so I figured—or at least that's what

they told me I could give, so—somebody said you can't give anymore, so I said well, maybe somebody else can here then." *Id.* at p. 419. Several persons formerly employed early on in the campaign have indicated that they conveyed to Ms. Spears that schemes similar to those at issue here were impermissible, i.e., setting up a business through which funds would be funneled to the candidate for use in the campaign.⁶

Second, the efforts to conceal the true source of the payments at issue, i.e., Gene Stipe, demonstrates knowledge that it was not permissible to fund the campaign from this source. Ms. Spears engaged in elaborate schemes in an attempt to legitimize these payments, i.e., using cash to reimburse law firm staff and others, writing checks to Ms. Prather allegedly for services provided. The facts gathered indicate that transactions were carefully planned and created by several of the same persons to finance Roberts campaign, indicating the violations emanated from a knowing and willful scheme by multiple parties to avoid the limitations of the Act.

Third, the knowing and willful nature of the violations can be inferred from Spears' efforts to impede this investigation. During her deposition, Ms. Spears offered testimony that was not credible and does not comport with the facts, e.g., Senator Stipe had no prior knowledge of the reimbursement scheme; Senator Stipe requested the refund of the \$67,500 because the cattle received were longhorns; the second cattle purchase occurred without Stipe's prior knowledge; she provided the \$45,250 to Crosslin on the night of the auction, but had no idea it was for Stipe's funding of sculpture purchases.

⁶ In addition, Oklahoma law also limits contribution amounts and prohibits contributions in the name of another. Oklahoma Ethics Commission Rules § 257:10-1-2(a) and § 257:10-1-2(j). Charlene Spears was formerly Gene Stipe's campaign manager.

The foregoing indicates a pattern of activities designed to deliberately evade the Act's contribution limitations. Accordingly, this Office is prepared to recommend that the Commission find probable cause to believe that Charlene Spears knowingly and willfully violated 2 U.S.C. § 441f.

V. RECOMMENDATION

Find probable cause to believe that Charlene Spears knowingly and willfully violated 2 U.S.C. § 441f.

Date

8/3/01


Lois G. Lerner

Acting General Counsel

Staff assigned: Xavier K. McDonnell
Margaret J. Toalson